

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ISIDORO RIVERA, et al.,

Plaintiffs,

-against-

THE INCORPORATED VILLAGE OF
FARMINGDALE, et al.,

Defendants.

ORDER

06-CV-2613 (DRH)(ARL)

HURLEY, District Judge:

The Court is in receipt of the parties' recent correspondence and rules as follows:

Because defendants have not yet filed a "responsive pleading" within the meaning of Federal Rule of Civil Procedure ("Rule") 15(a), plaintiffs are entitled to amend their complaint to add new claims as a matter of right; no leave of court is required. *See Barbara v. NYSE, Inc.*, 99 F.3d 49, 56 (2d Cir. 1996) (motion to dismiss is not a responsive pleading); *see also Stewart v. RCA Corp.*, 790 F.2d 624, 631 (7th Cir. 1986) (plaintiff "did not lose his right to amend the complaint by asking leave; the district court was obliged to grant this unnecessary request").

Plaintiffs' request to add and delete parties triggers Rule 21. Although the case law is divided as to whether a party must obtain leave of court before adding or dropping parties prior to the filing of a responsive pleading, the Second Circuit appears to have adopted the view that leave is not required. *See Washington v. N.Y.C. Bd. of Estimate*, 709 F.2d 792, 795 (2d Cir. 1984) ("Since the [defendant had] not answer[ed] the complaint . . . , Washington was entitled . . . to amend his complaint [to add defendants] as a matter of right, and his request at that time should have been granted.").

Accordingly, plaintiffs may file their Amended Complaint on or before January 17, 2006. Upon the filing thereof, the Court will terminate the pending motions to dismiss.

SO ORDERED.

Dated: Central Islip, N.Y.
January 3, 2007

/s _____
Denis R. Hurley,
United States District Judge